

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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Patrick Berry, et al.,

Case No. 20-cv-02189 WMW-JFD

Plaintiffs,

vs.

Hennepin County, et al.,

Defendants.

**DECLARATION OF  
CLARE DIEGEL IN SUPPORT OF  
PLAINTIFFS' MOTION TO COMPEL  
PRODUCTION OF DOCUMENTS AND  
ISSUE OF SANCTIONS AGAINST ALL  
DEFENDANT GROUPS**

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I, Clare Diegel, declare and state as follows:

1. I am a staff attorney with the American Civil Liberties Union of Minnesota, and counsel to Plaintiffs in the above-captioned case.
2. On November 7, 2022, Plaintiffs emailed all three Defendant groups asking them to confirm that they searched text messages for responsive documents.
3. The City Defendants did not respond to Plaintiffs' request in writing.
4. On November 8, 2022, Plaintiffs and City Defendants had a meet-and-confer regarding another unrelated issue, at which time City Defendants stated they had not searched for texts and that they do not typically search for texts unless there is a narrowed request.
5. The City Defendants have also stated the only way they can search for text messages is by searching individual phones.

6. Plaintiffs defined the term “documents” in their documents requests to all defendant groups the same way the County defines it: “Document” includes all “writings and recordings” and “photographs,” as those terms are defined in Rule 1001 of the Federal Rules of Evidence. The word “document” is also intended to include all that within and defined by Federal Rule of Civil Procedure 34(a)(1)(A) and (B), including Comments to the Rule. See attached **Exhibit A**, a true and correct copy of the definitions portion of Plaintiffs’ first set of document requests to the County Defendants.

7. On November 15, 2022, MPRB served discovery responses to Plaintiffs, stating that responsive data included, “but does not limit to – its body worn camera footage as responsive.” See attached as **Exhibit B**, a true and correct copy of MPRB’s Amended Responses to Interrogatories No. 11, 12, 17, 19, 22 and 23 of Plaintiffs’ Second Set of Interrogatories.

8. On December 3, 2021, Plaintiffs proposed an ESI protocol to Defendants, which was similar to the District Court’s template and references searches for text messages, see attached as **Exhibit C**, a true and correct copy of Plaintiffs’ [Proposed] Stipulated Protocol Governing the Production of Electronically Stored Information.

9. On December 3, 2021, the County Defendants sent via email a letter to the Court in advance of the IDR conference scheduled for December 8, 2021 regarding an ESI protocol. Attached as **Exhibit D** is a true and correct copy of the County Defendants’ letter.

10. On December 3, 2021, the City Defendants sent via email a letter to the Court pursuant to this Court's November 29, 2021 Order for IDR on the issue of an ESI protocol. Attached as **Exhibit E** is a true and correct copy of the City Defendants' letter.

11. On November 30, 2021, MPRB Defendants served their responses to Plaintiffs' first set of requests for documents, a true and correct copy is attached hereto as **Exhibit F**.

12. On December 1, 2021, County Defendants served their responses to Plaintiffs' first set of requests for documents, a true and correct copy is attached hereto as **Exhibit G**.

13. On December 1, 2021, City Defendants served their responses to Plaintiffs' first set of requests for documents, a true and correct copy is attached hereto as **Exhibit H**.

14. Attached hereto as **Exhibit I** is a true and correct copy of Plaintiffs' requests for production of documents to MPRB Defendants, sets 1-3.

15. Attached hereto as **Exhibit J** is a true and correct copy of Plaintiffs' requests for production of documents to County Defendants, sets 1-3.

16. Attached hereto as **Exhibit K** is a true and correct copy of Plaintiffs' requests for production of documents to City Defendants, sets 1-3.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: December 27, 2022

s/ Clare Diegel  
Clare Diegel